

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHNNIE BATES, OVERSTONE	:	CIVIL ACTION
CUMMINGS, and TODD PAYNE on their	:	
own behalf and all others similarly situated,	:	No. 03-5519
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
TANDY CORPORATION, d/b/a and a/k/a	:	
RADIOSHACK CORPORATION,	:	
	:	
Defendant.	:	

MEMORANDUM

ROBERT F. KELLY, S.J.

MAY 17, 2005

Presently before this Court is the Plaintiffs' Motion to Strike Objections and to Compel Responses to Interrogatories and Production of Documents. For the reasons that follow, the Motion will be denied.

In this employment discrimination action brought pursuant to Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981, Plaintiffs, who are current RadioShack employees, allege that RadioShack improperly places African American store managers in stores located in less affluent communities with lower sales volumes and does not promote African Americans to managerial positions above the store manager level.

Plaintiffs served their first set of interrogatories and document requests on RadioShack on December 8, 2003. Plaintiffs requested documents and information regarding RadioShack's nationwide workforce including information relating to the hiring, firing, promotion, elevation of and termination of every RadioShack Regional Director, District Manager, and store manager, (Req. Produc. No. 6), and the identity and race of every store

manager in RadioShack's stores for the past six years (Req. Produc. No. 10). RadioShack responded to these requests with the following objection:

RadioShack objects to the discovery of documents and information outside its Philadelphia region. The glass ceiling at issue in this case is founded on allegedly discriminatory conduct in the evaluation and/or promotion of individual plaintiffs – alleged conduct occurring wholly within the Philadelphia region, at the hand of decision-makers wholly within the Philadelphia region. This limitation, therefore, is broad enough to afford the parties sufficient information to evaluate the merits of Plaintiff's claims, defenses to those claims, and the claims of any similarly situated employees.

(Mem. L. Opp. Mot. Compel at 7). After periodic communications between the parties on this issue, Plaintiffs filed the present motion on March 18, 2005. RadioShack responded on April 11, 2005.

“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party,” unless it does not appear reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b); see also Hickman v. Taylor, 329 U.S. 495, 507 (1947). Discovery may not be had if the request is “unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive . . . or the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(2).

In employment discrimination cases, discovery is usually limited to information about employees in the same department or office absent a showing of a more particularized need for, and the likely relevance of broader information. Miller v. Yuasa-Excide, Inc., No. 94-1307, 1995 WL 606807 (D. Kan. July 17, 1995). When the employment decisions were made locally,

and in the absence of evidence of practices and procedures applicable to all employing units, discovery may properly be limited to the employing unit. Id.

Plaintiffs argue that they are entitled to nationwide discovery on two grounds. First, Plaintiffs argue they are putative representative plaintiffs in a class action alleging a nationwide pattern of employment discrimination and will need the information to prove their class action case. Second, Plaintiffs argue that a national policy or practice in fact exists at RadioShack with respect to what Plaintiffs characterize as a “two up” policy, in which major personnel decisions are made by managers in consultations with their immediate supervisors.

Plaintiffs’ class action arguments are unpersuasive. At present, Plaintiffs have failed to move for a certification of the class, and while the information might be relevant to the claims and defenses of such a class, it would not be necessary for the consideration of a motion to certify the class. See Fed. R. Civ. P. 23(a); Cutner v. Atl. Richfield Co., No. 77-806, 1977 WL 15426 (E.D. Pa. June 17, 1977). It “should not usually be necessary to undertake extensive discovery to unearth initial clues suggesting that others are being discriminated against.” Cutner, 1977 WL 15426 [unpaginated]. As to Plaintiffs’ arguments regarding the “two up” consultation system for personnel actions, I see no reason why the alleged policy mandates nationwide discovery without the existence of a certified nationwide class. The discovery produced by RadioShack covers two levels of management above the Plaintiffs’ positions.

Furthermore, RadioShack argues that providing nationwide discovery in the same manner as for the Philadelphia region would be unduly burdensome. Such an effort would require over 1000 hours and six months for data retrieval and formatting because RadioShack does not maintain the requested records in a manner responsive to Plaintiffs’ requests.

Preparation of the data relative to the Philadelphia Region required over 120 hours and extensive manual manipulation of the data. In light of the limited benefit to the Plaintiffs in an individual capacity from this nationwide data, I will not compel its production at this time.

An appropriate Order follows.

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RADIOSHACK CORPORATION,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 17th day of May, 2005, upon consideration of Plaintiffs' Motion to Strike Objections and to Compel Responses to Interrogatories and Production of Documents (Doc. No. 8), and the Response in opposition thereto, it is hereby **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

<u>/s/ Robert F. Kelly</u>	
ROBERT F. KELLY	Sr. J.